

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)
)
PUBLIC UTILITIES COMMISSION) DOCKET NO. 05-0002
)
Instituting a Proceeding to)
Investigate the Issues and)
Requirements Raised by, and)
and Contained in, Hawaii Revised)
Statutes 486H, as Amended.)
_____)

ORDER NO. 21579

Filed Feb. 2, 2005
At 10:30 o'clock A.M.

Karon Higdon.
Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)	
)	
PUBLIC UTILITIES COMMISSION)	Docket No. 05-00002
)	
Instituting a Proceeding to)	Order No. 21579
Investigate the Issues and)	
Requirements Raised by, and)	
and Contained in, Hawaii Revised)	
Statutes 486H, as Amended.)	
_____)	

ORDER

By this order, the commission grants Shell Oil Company's ("Shell") and the Hawaii Petroleum Marketers Association's ("HPMA") motions to intervene in this proceeding and requires the Parties to submit a Stipulation for Protective Order within ten (10) days from the date of this order.

I.

Introduction

On January 4, 2005, the commission instituted an investigation to examine the issues and requirements raised by, and contained in, Hawaii Revised Statutes ("HRS") Chapter 486H, as amended.¹ Through this docket, the commission intends to

¹During the 2002 Legislative session, the Legislature enacted Act 77, Session Laws of Hawaii 2002, which established maximum pre-tax wholesale and retail prices on regular unleaded gasoline to be sold in the State of Hawaii. In 2004, the Legislature enacted Act 242, Session Laws of Hawaii 2004 ("Act 242"), which amended HRS Chapter 486H by, among other things: (1) changing the baseline for determining maximum pre-tax

address the issues raised by, and contained in, HRS Chapter 486H, as amended. These issues include, but are not limited to:

1. Examining the effect, impact, and appropriateness of the baseline price as defined in HRS § 486H-13(c), as amended, and examining options as to a more appropriate baseline or a more appropriate reporting service, if any.
2. Examining the effect, impact, and appropriateness of the location adjustment factor established by HRS § 486H-13(d), as amended, at \$.04 per gallon, and examining options as to a more appropriate location adjustment factor, if any.
3. Examining the effect, impact, and appropriateness of the marketing margin factor established by HRS § 486H-13(e), as amended, at \$.18 per gallon, and examining options as to a more appropriate marketing margin factor, if any.
4. Examining the effect, impact, and appropriateness of the mid-grade adjustment factor established in HRS § 486H-13(f), as amended, at \$.05 per gallon,

wholesale gasoline prices by using the average of the spot prices for regular unleaded gasoline for the markets of New York Harbor, the United States Gulf Coast, and Los Angeles; (2) extending the maximum pre-tax wholesale price limits to mid-grade and premium gasoline; (3) repealing the maximum pre-tax retail gasoline price; (4) establishing zones within the State and authorize the public utilities commission to adjust the maximum pre-tax wholesale gasoline prices in the various zones; (5) extending the effective date for the imposition of the maximum pre-tax wholesale gasoline price limit to September 1, 2005; and (6) making an appropriation, to be expended by the public utilities commission, to carry out the purposes of HRS Chapter 486H, as amended.

examining options as to a more appropriate mid-grade adjustment factor, if any.

5. Examining the effect, impact, and appropriateness of the premium adjustment factor established by HRS § 486H-13(g), as amended, at \$.09 per gallon, and examining options as to a more appropriate premium adjustment factor, if any.
6. Determining the type of documents, data, and information the manufacturers, wholesalers, or jobbers must furnish to the Commission to make a determination on zone price adjustments. HRS § 486H-13(h), as amended.
7. Analyzing zone price adjustments to the maximum pre-tax wholesale regular unleaded, mid-grade, and premium gasoline prices and examining the effect, impact, and appropriateness on a zone by zone basis. HRS § 486H-13(i), as amended.
8. Determining the type of documents, data, and information necessary for the Commission to determine whether the manufacturer, wholesaler, or jobber is complying with any requirement imposed or rule adopted, pursuant to HRS Chapter 486H. HRS § 486H-13 (j), as amended.
9. Identifying any further adjustments necessary to establish maximum pre-tax wholesale gasoline prices that reflect and correlate with competitive market conditions. HRS § 486H-16(c), as amended.

To aid in its investigation, the commission made Chevron Hawaii Refinery ("Chevron") and Tesoro Hawaii Corporation ("Tesoro"), parties to this proceeding. The Consumer Advocate is also an ex officio party in this proceeding.²

On January 24, 2005, Shell and HPMA (collectively, hereinafter referred to as "intervenors") timely filed motions to intervene, pursuant to HAR § 6-61-55.³

II.

Motions to Intervene

HAR § 6-61-55, which govern interventions, requires, among other things, the movant to state the facts and interests thereto. In particular, HAR § 6-61-55(d) states that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented."

In Shell's motion to intervene, Shell alleges, among other things, that it is one of five principal non-refining marketers of gasoline, within the State of Hawaii. Shell further states that it maintains a major wholesale and retail presence on the islands of Oahu, Maui, Kauai, and the Big Island of Hawaii, through its multiple interests in stations and terminals throughout the State. Shell further asserts by virtue of its

²Pursuant to Hawaii Administrative Rules ("HAR") § 6-61-62, the Consumer Advocate is an ex officio party in all commission proceedings.

³Chevron, Tesoro, Consumer Advocate, Shell and HPMA hereinafter referred to as "Parties."

status as a principal non-refiner marketer of gasoline within the State of Hawaii, the issues and requirements raised by, and contained in, HRS Chapter 486H have direct application to Shell's operations. Moreover, the issues raised in this investigation all have a direct effect and impact on Shell's operations within the State of Hawaii.

In HPMA's motion to intervene, HPMA represents that it is a non-profit corporation whose members include substantially all of the jobbers⁴ operating within the State of Hawaii.⁵ HPMA asserts that the jobbers represent a key segment of the wholesale petroleum fuel industry and are at risk of being eliminated entirely if jobbers do not have the ability to obtain a cost effective margin between the price at which jobbers are able to purchase fuel from the manufacturers/refineries and the price at which the jobbers can competitively resell such products to their retail and wholesale customers.

Upon review, the commission finds that Shell and HPMA have substantially complied with our administrative rules and that their allegations set forth in their respective motions to intervene are reasonably pertinent to the issues of this docket and do not unduly broaden them. The commission,

⁴HPMA states that Hawaii jobbers are wholesale distributors of petroleum fuel products who purchase fuel from one of the two refineries operating in the State of Hawaii and resell and deliver these products to businesses for use in their operations and retail locations throughout the State, including remote areas not served by the major oil companies.

⁵HPMA represents that its members approved a resolution that MPMA file this motion to intervene on behalf of the HPMA membership.

therefore, concludes that Shell's and HPMA's motions to intervene should be granted.

Further, we must give all intervenors notice that their participation in this docket as intervenors will be limited to only the issues determined and/or authorized by the commission. The commission will preclude any efforts that will unreasonably broaden these issues and unduly delay the proceedings. The commission will reconsider any of the intervenors' participation in this proceeding if, at any time during this proceeding, the commission determines that any of the intervenors' efforts: (1) unreasonably broaden the pertinent issues in this docket; or (2) unduly delay the proceedings.

Finally, the commission recognizes that the Parties may need to designate certain information filed with the commission as "Confidential."

Accordingly, the commission will direct the Parties to informally confer and file a Stipulation for Protective Order for commission review and approval which will govern the treatment of confidential information filed in this docket, pursuant to HAR 6-61-50.

III.


THE COMMISSION ORDERS:

1. Shell's and HPMA's motions to intervene are granted.

2. The Parties shall informally confer and file a Stipulation for Protective Order, for commission review and approval within ten (10) days from the date of this order.

DONE at Honolulu, Hawaii FEB - 2 2005.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kevin M. Katsura
Commission Counsel

05-0002.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21579 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

ALBERT CHEE, SR.
CHEVRON USA
91-480 Malakole Street
Kapolei, HI 96707

DAVID HEERWALD LEONARD
VICE PRESIDENT & GENERAL COUNSEL
TESORO HAWAII CORPORATION
91-325 Komohana Street
Kapolei, HI 96707-1713

CRAIG I. NAKANISHI, ESQ.
RUSH MOORE LLP
737 Bishop Street, Suite 2400
Honolulu, HI 96813

CLIFFORD K. HIGA, ESQ.
BRUCE NAKAMURA, ESQ.
KOBAYASHI, SUGITA & GODA
First Hawaiian Center
999 Bishop Street, Suite 2600
Honolulu, HI 96813

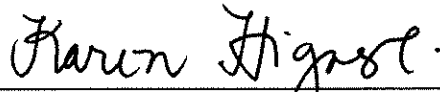
DANNY BATCHELOR
SENIOR COUNSEL
SHELL OIL COMPANY
P. O. Box 2463
Houston, TX 77252-2463

Certificate of Service

Page 2

HAWAII PETROLEUM MARKETERS ASSOCIATION
c/o ROBERT W. FUNG, PRESIDENT
P. O. Box 500
Honolulu, HI 96809

KELLY G. LAPORTE, ESQ.
MARC E. ROUSSEAU, ESQ.
CADES SCHUTTE LLP
1000 Bishop Street, Suite 1200
Honolulu, HI 96813



Karen Higashi

DATED: FEB - 2 2005